

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A
JUDGE, No. 03-14

Case No.: SC 04-1

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**SPECIAL COUNSEL’S OBJECTION TO RESPONDENT’S
MOTION TO SUPPLEMENT THE RECORD**

Special Counsel to the Florida Judicial Qualifications Commission objects to the Honorable James E. Henson’s motion to supplement the record and says:

1. No Florida Rule of Civil Procedure, as incorporated into this proceeding by Rule 12(a), Florida Judicial Qualifications Commission Rules, permits supplementing the record after the proceeding is submitted for decision.

2. The document attached to Judge Henson’s motion to supplement the record contains inadmissible hearsay statements for which no exception is applicable. Moreover, the document attached to Judge Henson’s motion to supplement the record, referred to by Judge Henson as a “sworn statement,” contains no oath, affirmation, or verification.

3. As acknowledged by Respondent’s motion to supplement the record, the Judge’s testimony was inconsistent with that of many witnesses including Assistant State Attorney Michael Saunders. Even if the document attached to Judge Henson’s motion to supplement the record could be considered by the Hearing Panel, the statements contained therein, to the extent they are inconsistent with the testimony of Assistant State Attorney Michael Saunders, are, at best, collateral if not irrelevant to the substance of Mr. Saunders’ testimony regarding James Henson’s failure to communicate to Mr. Saunders

an acceptance of the State's initial plea offer to Diana Jimenez before the plea offer was withdrawn.

4. Michael Saunders contacted Special Counsel on November 10, 2004 and stated (i) that counsel for Judge Henson recently contacted Mr. Saunders, showed Mr. Saunders the statement of Cathleen Sznerch that was attached to Judge Henson's motion to supplement the record, and asked Mr. Saunders if his testimony would change based on Mr. Saunders' reading of the statement; (ii) that Mr. Saunders told counsel for Judge Henson that Mr. Saunders' testimony would not change after reading Ms. Sznerch's statement; and (iii) that Mr. Saunders has a clear recollection of discussing Diana Jimenez's pregnancy with Ms. Sznerch when Mr. Saunders was in North Carolina in May, 2001 for the deposition of Ms. Sznerch.

5. If the Hearing Panel considers granting Judge Henson's motion to supplement the record, Special Counsel requests oral argument regarding this motion.

SMITH HULSEY & BUSEY

By _____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and mail to Kirk N. Kirkconnell, Esq., Kirkconnell, Lindsey, Snure & Yates, P.A., 1150 Louisiana Avenue, P.O. Box 2728, Winter Park, Florida 32790, and John R. Beranek, Esq., Ausley & McMullen, P.A., 227 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301, on this ____ day of November, 2004.

Attorney

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